

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JIMMY JOHN'S FRANCHISE, INC.,
and JIMMY JOHN'S ENTERPRISES INC.,

Plaintiffs,

v.

Case Number 04-10076-BC
Honorable David M. Lawson

THE SMART SHOPPER CLUB,
and LARRY DROZ,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION, AND DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

This matter is before the court on the plaintiffs' motion for default judgment. The motion was referred to United States Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1. The magistrate judge issued a report on June 9, 2005, recommending that this Court deny the plaintiffs' motion. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, the plaintiffs did not file any objections. The plaintiffs' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation is **ADOPTED**.

It is further **ORDERED** that the plaintiffs' motion for default judgment [dkt # 17] is **DENIED**. The case shall proceed to discovery and trial on the merits.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 1, 2005

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 1, 2005.

s/Tracy A. Jacobs
TRACY A. JACOBS